

APR 6 1979

IN THE SUPREME COURT OF THE UNITED STATES

October TERM, 1978

NO. 78-1525

In Re: Extension of the Boundaries of the
City of Pearl, Mississippi

John H. Nowlin, Jr.

Petitioner

VS.

City of Pearl, Mississippi

Respondent

PETITION FOR WRIT OF CERTIORARI TO

The Supreme Court of Mississippi

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OCTOBER TERM, 1978

NO. _____

John H. Nowlin, Jr.

Petitioner

VS.

City of Pearl, Mississippi

Respondent.

• PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF MISSISSIPPI

Petitioner, **John H. Nowlin, Jr.**, prays that a writ of certiorari be issued to review the judgment and opinion of the Supreme Court of Mississippi, which opinion was rendered on December 13, 1978, and the Petition for Rehearing which was denied by the Court sitting en banc on January 10, 1979.

OPINIONS BELOW

The opinion of the Supreme Court of Mississippi is reported in 365 So. 2nd 952 and it appears at Appendix A in this Petition. The petition for rehearing appears in Appendix B to this Petition. The Order denying the petition

for rehearing appears in Appendix C to this Petition. The Amended Decree Ratifying, Approving and Confirming the Boundaries and Limits of the City of Pearl, Mississippi, as Modified by the Court appears in Appendix D to this Petition. The Motion to Dismiss (for failure to record ordinance in Ordinance Book) appears in Appendix E to this Petition. The Order (opinion of the Special Chancellor) appears in Appendix F to this Petition. The Order Overruling Motion to Dismiss for Failure to Record Ordinance in Ordinance Book appears in Appendix G to this Petition.

JURISDICTION

The Opinion and Affirmation of the Supreme Court of Mississippi was rendered December 13, 1978, and the Petition for Rehearing was denied January 10, 1979. The Petition for Rehearing and the Order Denying Same are shown in Appendix B and Appendix C to this Petition.

The Petition for Writ of Certiorari was filed less than ninety (90) days from the date of the denial of the Petition for Rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

QUESTION PRESENTED

The question presented in this petition is:

- 1. Whether Petitioner's right not to be deprived of his property without due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States were denied by the decision of the Su-

preme Court of Mississippi which approved annexation by the City of Pearl.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth and Fourteenth Amendments to the Constitution of the United States.

2. Sections 21-1-31, 21-1-15, 13-1-143, 13-1-145, and 21-13-13 of the Mississippi Code of 1972, Annotated as amended.

STATEMENT OF THE CASE

The City of Pearl, Mississippi, was incorporated on June 29, 1973, and included 10.5 acres in the original incorporation. On September 20, 1977, Pearl passed an Annexation Ordinance which, if approved, would approximately double the size of Pearl by bringing in territory to the northwest side of the city (Area I), territory to the south of the city (Area II), and territory to the East of the city (Area III). The Ordinance was not filed or recorded in the City of Pearl's Ordinance Book as of November 1, 1977. On October 3, 1977, the City of Pearl filed a Petition for the Extension of the Boundaries of the City of Pearl, Mississippi, and for Ratification and Confirmation of an Ordinance Extending and Enlarging Such Boundaries in the Chancery Court of Rankin County, Mississippi, being Cause Number 15,717. In Exhibit "A" attached to the Petition for Extension, the City of Pearl alleged that it would make the following improvements in the annexed territory, including (A) draining, grading, and improving existing streets, (B) installing water lines and fire hydrants, (C) installing sewer lines, and (D) installing street lighting, and stated that these improvements would

be completed within a reasonable time not to exceed six years from the effective date of the Ordinance and that the City of Pearl would provide the following services beginning on the effective date of the Ordinance including police protection, fire protection, garbage disposal, trash and other debris removed, pest control, maintenance of existing streets, water rates reduced as applicable to equal the rates within the present corporate limits, the right to exercise the ballots of municipal elections of every sort, and city planning facilities.

The City of Pearl then issued summons for all cities within three miles of the boundaries of the city, and allegedly posted three notices of Extension, one in each area proposed to be annexed, and published a general summons to all parties in the Pearl Press. Copies of the notices which were allegedly posted were filed in the court file and a proof of publication was filed with respect to the publication of the general summons, but none of these copies of notices, or the proof of publication were introduced into evidence, and there was no affidavit of posting of these three notices filed in the Court file, and no affidavit of posting was introduced into evidence nor was any person called to testify by the city to prove jurisdiction. Four hundred fifty-five persons filed objections to the annexation.

Following the overruling of a Motion to Dismiss filed by objectors alleging that Section 21-1-15, Mississippi Code of 1972, Annotated as amended, requires that three notices be posted in each area, the city did post three notices in each area and copies of these notices were filed in the Court file, but again these copies were not introduced into evidence nor were any persons called to testify as to posting of notices so as to prove jurisdiction.

The objectors also filed a Motion to Dismiss alleging that the Ordinance for Annexation upon which the Petition was founded had not been entered in the Ordinance Book as of the date the Petition was filed, but the Court overruled the Motion noting that it was of the opinion that the statute does not require the inclusion of the Ordinance until approved by the Court when it will become a law of the municipality.

The trial was held before a Special Chancellor during the February, 1978, vacation term of the Chancery Court of Rankin County, Mississippi. At the trial the objectors did not object to the jurisdiction of the trial court to hear the case, specially preserving that issue for presentation on appeal to the Supreme Court of Mississippi.

On appeal to the Supreme Court of Mississippi, wherein John H. Nowlin, Jr., one of the objectors, sought reversal of the Chancellor's Decree approving annexation of all but three and one-half square miles of the area described in the annexation ordinance, Appellant Nowlin argued that the City had failed to prove jurisdiction in accordance with Mississippi law because it failed to show that process had been obtained over the necessary parties and because it failed to show that the Ordinance had been recorded in the municipal ordinance book, as required by Mississippi law, immediately after its passage and prior to the filing of the Petition in Chancery Court.

The Supreme Court of Mississippi, in Cause No. 51,016, rejected Appellant Nowlin's arguments as to jurisdiction and affirmed as to jurisdiction and affirmed the Chancellor's decree approving annexation in its opinion rendered on December 13, 1978, now reported in 365 So. 2nd 952. Appellant Nowlin thereupon filed a Petition for

Rehearing, realleging both jurisdictional grounds as a basis for reconsideration, but the Petition for Rehearing was denied by the Court sitting en banc on January 10, 1979.

The basis for the affirmance of the Chancellor's decree, in the first instance, by the Supreme Court of Mississippi was that jurisdiction over the parties was obtained by the City by placing copies of notices which were allegedly posted in the areas proposed for annexation in the court file and that this act constituted proof of jurisdiction although the statutes of the State of Mississippi provide that jurisdiction in this instance is proved by the person so posting the notice filing an affidavit of posting. The Supreme Court rejected the argument that the City of Pearl failed to obtain jurisdiction of the subject matter when it was stipulated that the Appellee had not recorded the Ordinance in the Ordinance Book by holding that same was not required. The decision of the Supreme Court of Mississippi deprived the objectors of their right not to be deprived of their property without due process of law in derogation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

REASONS FOR GRANTING THE WRIT

The Decision of the Supreme Court of Mississippi affirming the Chancellor's Decree approving annexation by the City of Pearl is in direct opposition to the Constitution of the United States because the objectors were denied sacred rights protected by the Fifth and Fourteenth Amendments to the Constitution.

In Mississippi jurisprudence, the procedure for annexation of adjacent territory to municipalities involves, in short, the passage of an annexation ordinance by the gov-

erning body of the municipality, followed by the filing of a Petition to approve the Ordinance in the Chancery Court of the county in which the municipality is located. The statutes provide in what manner process is obtained on all persons interested in or affected by the annexation and in what manner compliance with the process and notice requirements is proved on a trial of the cause. Specifically, these statutes are as follows:

Section 21-1-31, Mississippi Code of 1972, Annotated as amended, prescribes the method for publication of notice when an annexation petition is filed, as follows:

"Upon the filing of such Petition and upon application therefor by the petitioners, the Chancellor shall fix a date certain either in term time or in vacation when a hearing on said Petition will be held, and notice thereof shall be given in the same manner and for the same length of time as is provided in Section 21-1-151 with regard to the creation of municipal corporations, and all parties interested in, affected by, or being aggrieved by said proposed enlargement or contraction shall have the right to appear at said hearing and present their objection to such proposed enlargement or contraction . . ."

Section 21-1-15, Mississippi Code of 1972, Annotated as amended, provides that:

". . . [N]otice shall be given to all persons interested in, affected by, or having objections to the proposed incorporation that the hearing on the Petition will be held on the day, fixed

by the Chancellor and that all such persons will have the right to appear and enter their objections, if any, to the proposed incorporation. The said notice shall be given by publication thereof in some newspaper published or having a general circulation in the territory proposed to be incorporated once each week, and by posting a copy of such notice in three or more public places in such territory. The first publication of such notice and the posted notice shall be made at least 30 days prior to the day fixed for the hearing of said Petition, and such notice shall contain a full description of the territory proposed to be incorporated . . ."

A further statute, Section 13-1-143, Mississippi Code of 1972, Annotated as amended, details how publication of such notice is proved:

"The publication of any notice in a newspaper, when required by law or by order of court, may be proved by the production of a copy of the notice, with the affidavit of the printer, publisher, clerk, or superintendent of the newspaper, specifying the respective numbers and dates of the newspaper in which publication was made, and such affidavit shall be evidence. Any officer authorized to take an affidavit who may reside in the vicinity or of convenience to the printer, publisher, clerk, or superintendent or the newspaper in which publication may have been made shall on application of a party interested, by subpoena or otherwise require the printer, publisher, clerk

or superintendent to appear before him at a time and place to be appointed and such officer shall then and there take the deposition of the printer, publisher, clerk, or superintendent to the matters, required to be certified. The affidavit or deposition and certificate shall be sealed up, endorsed and transmitted to the court where the same is required to be used, in the same manner as required for the return of depositions."

As to proof of posting of notices, Section 13-1-145, Mississippi Code of 1972, Annotated as amended, provides:

"The posting of any notice required by law or the order or any court may be proved by filing a copy of the notice, with an affidavit of posting in the court in which the proceeding was had in which the notice was required. Such affidavit shall be competent evidence in all courts, and shall be prima facie evidence of what it states."

The Supreme Court of Mississippi erroneously interpreted Section 13-1-145 of the Mississippi Code of 1972, Annotated as amended, which provides the manner of proof for posting of any notice required by law, in such a way as to deprive Petitioner of his property without due process of law, because the Supreme Court of Mississippi erroneously held that jurisdiction was proved in a method contrary to the laws of Mississippi. Additionally, the Supreme Court of Mississippi erroneously interpreted Section 21-13-13 of the Mississippi Code of 1972, Annotated as amended, which provides that all ordinances which are

in their nature laws of the municipality and are not mere resolutions, orders, or decrees of a temporary nature, be recorded in the Ordinance Book immediately after passage, in such a nature as to deprive the objectors of their property without due process of law.

Sections 21-1-31, 21-1-15, 13-1-143, and 13-1-145 of the Mississippi Code of 1972, Annotated as amended, prescribe the exact manner of giving notice in annexation cases and the method of proving that proper process was obtained. In this case, the record is devoid of any affidavit having been filed by anyone posting these required notices or of any testimony being offered to the Court by the City to prove that the notices were posted in compliance with the statute, although in a recent case, Myrick v. Incorporation of a Designated Area Into a Municipal Corporation to be named Stringer, 336 So. 2nd 209 (Miss. 1976), the Supreme Court of Mississippi stated that:

"The notice required by this statute is in lieu of personal service and it is well settled that a statute providing for notice in lieu of personal service must be strictly complied with and where the statute requires the posting of notices, the notices must be so posted and the record must show that they were posted as required by the statute."

The Court in the Myrick case, *supra*, went on to say that:

"The burden of proof was upon the petitioners to show that they had met the statutory requirements to give the court jurisdiction to hear their petition."

According to the rules expressed in the Myrick case, the burden of proof was upon the Petitioners to prove that the notice required by the statute was given by filing an affidavit signed by the person so posting the notices stating that he did so. The trial court erred in making a finding that it had jurisdiction in this case and the Supreme Court erred in affirming this decision because the City of Pearl failed to prove that it had posted the notices in accordance with the manner prescribed by Mississippi law. For the court to adjudicate that the City was entitled to annex the property owned by the objectors and impose additional taxes on them without giving proper notice and proving same as required by law is a direct violation of the objectors' rights under the Fifth and Fourteenth Amendments.

This Court succinctly stated the rule in Mullane v. Central Hanover Tr. Co. 339 U.S. 306 (1950) that,

"Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."

In Pennoyer v. Neff 95 U.S. 733 (1877), this Court gave a similar definition of due process which reads,

"Due process of law means a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights."

In the instant case the objectors were obviously denied the right to be protected from deprivation of their property without due process of law because the City wholly failed to prove jurisdiction over the objectors as required by Mississippi law. The objectors' rights were violated by the Mississippi Supreme Court's holding that jurisdiction was shown by the City by placing copies of notices which were allegedly posted in the areas to be annexed in the court file without any testimony or affidavit that they were posted although the statutes in Mississippi clearly state how jurisdiction is to be proved and the City wholly failed to comply. Thus the annexation proceeding was not conducted according to established rules and procedures established by Mississippi law, and due process of law was violated.

Section 21-13-13, Mississippi Code of 1972, Annotated as amended, provides that:

"The municipal clerk shall keep a book of permanent construction, to be entitled 'Ordinances of the city, town or village of _____,' in which he shall enter at length, in cases where same have not already been entered, every ordinance in force, and every ordinance hereafter enacted immediately after its passage. Such ordinance shall be entered in typewriting, or in a plain and distinct handwriting, and the clerk shall append to each ordinance a note stating the date of its passage, and shall cite therein the book and page of the minutes containing the record of its passage. All ordinances which have been previously passed by any municipality which are not so entered in the ordinance book, and all ordi-

nances hereafter passed which are not entered in the ordinance book, shall be void and of no effect. The ordinances which are to be recorded in such ordinance book are those which are in their nature laws of the municipality, and are not mere resolutions, orders or decrees of a temporary nature. It shall be the duty of the municipal clerk to keep the ordinance book indexed alphabetically."

The objectors moved to dismiss the petition for approval of the annexation subsequent to the filing by the City of the Petition in Chancery Court because the annexation ordinance had not been recorded in the municipal ordinance book maintained by the City of Pearl immediately after the passage of the ordinance on September 20, 1977, nor had it been recorded in the Ordinance Book of October 3, 1977, the date the Petition was filed in Chancery Court. The parties entered into a stipulation for purposes of argument on the Motion, that the annexation ordinance was not filed or recorded in the Ordinance Book as of November 1, 1977. The objectors argued to support their Motion that the City's failure to record the ordinance immediately after its passage rendered same to be void and of no effect, and that since a void ordinance cannot be the subject of an annexation petition, the trial court was without subject matter jurisdiction. The trial court overruled the motion to dismiss the petition and the Supreme Court of Mississippi affirmed this ruling noting as the basis for its holding that the annexation ordinance was ineffective until it is approved by the court. The Court cited the following dicta which had appeared in City of Biloxi v. Cawley 278 So. 2nd 389 (Miss. 1973) as the foundation, without further elaboration for its decision, to-wit:

"Obviously an annexation ordinance becomes effective when, and not before, it is approved by a decree of the chancery court. Neither recording nor signing of such an ordinance in the ordinance book will render it effective without such approval. It is to be doubted that an annexation ordinance should be recorded in the ordinance book until after it shall have been approved by a decree of the chancery court in statutory proceedings. In any event, an annexation ordinance is without effect until so approved.

(278 So. 2nd at 393).

Section 21-13-13, Mississippi Code of 1972, Annotated as amended, *supra*, is clear and concise as to which ordinances must be recorded in the municipal ordinance book, and excepts therefrom only "... mere resolutions, orders, or decrees of a temporary nature." There is no statutory exception or distinction for annexation ordinances created by this Code section and therefore under the correct interpretation of Mississippi law the annexation ordinance must be recorded in the municipal ordinance book immediately after its passage; otherwise it is void. A void ordinance cannot be the basis of a petition to approve an annexation ordinance because the court cannot breathe life into an ordinance void at the inception of the lawsuit. Therefore, the trial court was without subject matter jurisdiction in accepting jurisdiction and hearing the Petition. When the Supreme Court of Mississippi rejected the objectors' argument on this point, it deprived them of due process of law because it held that the ordinance was valid when in effect it could not have been because of its failure to have been recorded in the ordinance

book immediately after passage, according to Mississippi law.

CONCLUSION

The decision of the Supreme Court of Mississippi affirming the Chancery Court's decision approving annexation should now be reversed by this Court because the Petitioner's rights not to be deprived of their property without due process of law were violated as a result of said decision. The Supreme Court affirmed the trial court's decision that it had jurisdiction over both the parties and the subject matter and its holding was contrary to the law and established principles of Mississippi jurisprudence and thus deprived the objectors of a sacred right—the right not to be deprived of their property without due process of law. For the above and foregoing reasons, the Writ of Certiorari should be granted to review the decisions of the Supreme Court of Mississippi in this case.

Respectfully submitted,

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APPENDICES

APPENDIX A
IN THE SUPREME COURT OF MISSISSIPPI

NO. 51,016

**IN RE: EXTENSION OF THE BOUNDARIES
OF THE CITY OF PEARL, MISSISSIPPI**

JOHN H. NOWLIN, JR.

V.

CITY OF PEARL

**BEFORE ROBERTSON, LEE AND COFER
COFER, JUSTICE, FOR THE COURT:**

This is an appeal from a decree of the Chancery Court of Rankin County approving, ratifying and confirming an enlargement of appellee, City of Pearl (Pearl), with slight modifications.

Appellant, Nowlin, has assigned five errors:

1. The lower court committed reversible error in finding that it had jurisdiction over the parties and entering its final decree thereon because appellee, petitioner below, failed to prove posting of notices as required by law.

2. The lower court committed reversible error in overruling appellant's motion to dismiss because the Annexation Ordinance was not recorded in the Ordinance Book either after its passage or before the filing of the Petition as required by law.

3. The chancellor was manifestly wrong in holding that the six year time period for providing services to the areas proposed to be annexed was reasonable.

4. The testimony of one sole governmental official of Pearl, the Mayor, capable of implementing promised improvements in the areas proposed to be annexed was totally insufficient and inadequate to support the chancellor's finding that the annexation was reasonable and thus the chancellor's finding was manifestly wrong and the decree entered thereon should be reversed.

5. The chancellor was manifestly wrong, considering all the essential testimony in this case, in holding that annexation by Pearl was reasonable, and the decree should be reversed.

As observed, appellant, in his first two assignments, attacks the jurisdiction of the trial court for alleged insufficiency of process and asserts that objectors' motion to dismiss the cause for failure of Pearl to record in its ordinance book the prerequisite ordinance of enlargement should have been sustained.

In the first of these assignments, he points to Mississippi Code Annotated, section 21-1-31, (1972), which, on petitions for annexation of territory, requires that "notice thereof shall be given in the same manner and for the same length of time as is provided in Section 21-1-15 with regard to the creation of municipal corporations."

The latter statute says in part that:

[N]otice shall be given by publication thereof in some newspaper published or having a general circulation in the territory proposed to be incorporated once each week for three consecutive weeks, and by posting a copy of such notice in three or more public places in such territory.

Appellant calls attention to section 13-1-145, as setting out the method of proof of posting, which provides:

The posting of any notice required by law or the order of any court may be proved by filing a copy of the notice, with an affidavit of posting, in the court in which the proceeding was had in which the notice was required. Such affidavit shall be competent evidence in all courts, and shall be prima facie evidence of what it states.

As a part of its notice to interested parties, the record shows that five copies of the notice were posted, two in Pearl and one in each of the three areas sought to be annexed. These are, by the return thereon, shown to have been posted at five public places, the particular places shown in the returns thereon. A deputy sheriff posted the notices as reflected in the returns.

It is contended that either the officer who posted the notices should have made an affidavit of posting or he should have been produced to show that he thus posted them. In support of his position on the posting and recording of the precedent ordinance, appellant cites Myrick v. Incorporation of Stringer, 336 So. 2d 209 (Miss. 1976).

In the Myrick decision, it is said:

The privilege of incorporation of a municipality can be granted only by the legislature and the procedure must be strictly complied with which grants to the chancery court the duty to determine whether public convenience and necessity will be served by the incorporation.

and

The notice required by this statute (21-1-15) is in lieu of personal service and it is well settled that a statute providing for notice in lieu of personal service must be strictly complied with and where the statute required the posting of notices, the notices must be so posted and the record must show that they were posted as required by the statute. *Langstaff v. Town of Durant*, 122 Miss. 471, 84 So. 459 (1920).
(336 So. 2d at 210).

In that case the record failed to show the posting of notice. We further said:

No affidavit was filed as provided for in this section (13-1-145) and no attempt was otherwise made to prove that the notices were posted as required by statute. Consequently, the finding of the chancellor that proper notice was given as required by statute is not supported by the proof. (Emphasis added).
(336 So. 2d at 210-211)

While strict compliance is necessary, section 13-1-145 says that the posting of the notices may be proved by an affidavit of the posting. This method of proving the notice does not preclude another method of proving such posting. Still recognizing that strict compliance is necessary, the posting of the notices by a deputy sheriff of Rankin County with returns thereon, reading with necessary variances to reflect where posted, the returns on all five notices are substantially as follows:

State of Mississippi
Rankin County

Cause No. 15,717
Chancery Court, Rankin County

I have this day executed the within writ by personally posting a true and correct copy of the above and foregoing summons in a public place in the area proposed to be annexed, as follows, to-wit:

(naming place)

This the 4th day of October, 1977.

J. B. Torrence, Sheriff
By: Clifford Boggan, D. S.

In the *Langstaff* case, *supra*, it was said:

Where the statute requires a notice to be posted at a particular place, the notice must be so posted and the record should show that it was posted in accordance with the statute. Where a pleading states generally that notice was given as required by law, and the notice and the officer's certificate thereto shows specifically by notation thereon how it was done, such notice and notation will control the general averment.

(122 Miss. at 492, 84 So. at 460).

72 C.J.S., Process, Section 90, p. 1128 (1951), says in part:

... The return is an official act, and constitutes the official oath of the officer as to the

facts stated in the return. . . . (Emphasis added).

The solemn returns of the officer on these notices are sufficient to meet the notice requirement of posting contained in the statute.

When the attack was made on process, Pearl, earlier than the time required therefor, caused posting of three notices in each of the three areas sought to be annexed. While we view this precautionary act as a commendable one, we hold that the original posting was sufficient and the sheriff's return on that posting met the requirements of the statute.

Appellant further contends that the court was without jurisdiction because the proof of newspaper publication of the notice and the copies of the posted notices with the sheriff's return as to his posting of them, were not introduced in evidence.

Griffith's Mississippi Chancery Practice, section 572 (2d ed. 1950), "Pleadings judicially noticed," says:

So it is then that the pleadings control the scope of the testimony, supply by their admissions the place of proof as to all facts so admitted, and that some answers are actually part of the evidence. The presentation of oral or written evidence on the hearing through the means of witnesses or of documents is therefore only an adjunct, albeit a substantial adjunct, of the case already made. The pleadings, summons, all motions and all orders theretofore made in the case are parts of the record, prove themselves and it is not neces-

sary to formally introduce them at the hearing. It is not necessary to introduce in evidence a part of the record in the instant case, because the court takes judicial notice of all judicial parts of the record and it is therefore already in evidence (Emphasis supplied).

Walker V. Walker, 7 Miss. 500, 6 How. 510 (1842), says, in part:

. . . our courts acquire jurisdiction by service of the process merely without the appearance of the defendant, and as it must appear from the record that the court had jurisdiction, the process constitutes a part of the record. (Emphasis added).
(7 Miss. at 510).

It is our view that the proof of publication of the notice and the copies of the posted notices with the sheriff's return thereon, when filed, became a part of the record and were thereby, before the court, and it was not necessary that they be made a part of the evidence in the case.

It is urged in the second assignment of error that the cause should have been dismissed because of Pearl's failure to cause the annexation ordinance to be recorded in the city's ordinance book.

Mississippi Code Annotated, section 21-13-13 (1972), is relied upon as authority for this assignment. That statute provides in pertinent part that the clerk shall enter at length in the ordinance book every ordinance enacted immediately after its passage, and that all ordinances thereafter passed which are not entered in the or-

dinance book shall be void and of no effect. "The ordinances which are to be recorded in such ordinance book are those which are in their nature laws of the municipality, and are not mere resolutions, orders or decrees of a temporary nature."

Due adoption of the ordinance and its appearance in the minutes of the Mayor and Board of Aldermen are facts not at issue but are stipulated by the parties.

That this question would ultimately be before us was probably presaged by the opinion in City of Biloxi V. Cawley, 278 So. 2d 389 (Miss. 1973), wherein assertedly there appears a dictum, in which we held:

Obviously an annexation ordinance becomes effective when, and not before, it is approved by a decree of the chancery court. Neither recording nor signing of such an ordinance in the ordinance book will render it effective without such approval. It is to be doubted that an annexation ordinance should be recorded in the ordinance book until after it shall have been approved by a decree of the chancery court in statutory proceedings. In any event, an annexation ordinance is without effect until so approved.

(278 So. 2d at 393).

We now hold that the annexation ordinance, ineffective until it is approved by the court, was not required to be recorded in the ordinance book of Pearl until final approval of it by the court.

These two assignments of error at the threshold of the case and having to do with only two of multiple pre-

trial motions filed in the case, having now been disposed of, the remaining three asserted errors are reached on the merits.

The case was strenuously tried, and there are few facets of the proof wherein the parties agreed in the trial. The record consists of thirteen volumes, 2,158 pages, and the abstract of it is 285 pages in length. Examination of the abstract and of the record has been made.

Pearl was incorporated June 25, 1973, [In Re Incorporation of the City of Pearl, 279 So. 2d 590 (Miss. 1973)], and encompassed 10.5 square miles. On September 20, 1977, the municipality adopted the present ordinance for annexation of territory outside of, but contiguous to, its boundaries and filed petition in this cause praying approval of the annexation, which territory, if approved by the court, would more than double its size. There are three areas, referred to as area one, area two, and area three, sought to be annexed.

Area one is the smallest of the three, and is bounded on its easterly and south sides by Pearl and on its north and westerly sides by the municipality of Flowood. It is, therefore, an enclave completely surrounded by Pearl and Flowood.

Area two lies southerly of, and is bounded by Pearl and Richland and unincorporated territory.

Area three has a common boundary with Pearl, and is also bounded by the City of Jackson's Allen C. Thompson Airport and by territory then unincorporated.

Dodd V. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960), contains criteria to be met in the extension

of municipal boundaries and these have, since that decision, been recognized as factors governing the reasonableness of the annexation and the correctness of the governing authority's finding that such annexation is publicly convenient and necessary. These criteria are:

1. The city's need for expansion;
2. Whether the territory sought to be annexed is reasonably within the path of such expansion;
3. The potential health hazard from sewage and waste disposal, and
4. The city's financial ability to make the improvements and furnish municipal services to the area if annexed.

Pearl, in its ordinance, promised prompt police, fire and pest protection, and six other related needs. Where applicable, necessary, and economically feasible, it further promised, to be completed within a reasonable time not exceeding six years, unless delayed by war or military preparedness restrictions, the following improvements:

- A. Grading, draining, and improving existing streets;
- B. Installing water lines and fire hydrants;
- C. Installing sewer lines; and
- D. Installing street lighting.

The chancellor, in a well-reasoned opinion, reflecting full understanding of the long record made over a hearing extending almost two weeks, found and decreed in

favor of Pearl on all four of the Dodd criteria above, and that the annexation, with small exceptions, as prayed, is reasonable and to the public convenience and necessity. We will not detail the testimony for and contrary to his finding, but are of the opinion that his determination is supported by substantial evidence, and is not contrary to the overwhelming weight of evidence, and we agree with his decision. As heretofore stated, there is conflict throughout the record, and we could not say a contrary decision on his part would be unsupported by substantial evidence.

Pearl, still a fledgling municipality, was carved out of territory unregulated by responsible authority wherein the property owners, with no restrictions thereon, respectively did what was right in their own eyes. The result was a hodge-podge of buildings, mobile homes, roads, and sewer conveniences, a situation not wholly remedied, which will require its attention for a number of years yet. As might be expected under such circumstances, scores of objectors assert that Pearl should attend to the needs within its boundaries before undertaking fulfillment of promises to the area sought to be annexed, a "physician, heal thyself" sort of position and argument. Its very effort here has wrapped up in it a desire on its part that the areas here involved, being in the path of its expansion, will not grow up and become densely populated with a "crazy quilt" situation of development which will require uprooting and a new start in the matter of water, streets, sewer, and other necessities that people have. Hence, Pearl's desire is to regulate these areas now before such conditions are created.

A12

The chancellor's decision and decree are affirmed.

AFFIRMED.

**PATTERSON, C. J., AND SMITH, P. J., AND
ROBERTSON, P. J., AND SUGG,
WALKER, BROOM, LEE, AND
BOWLING, JJ., CONCUR.**

A13

APPENDIX B

IN THE SUPREME COURT OF MISSISSIPPI

NO. 51,016

**IN RE: EXTENSION OF THE BOUNDARIES OF
THE CITY OF PEARL, MISSISSIPPI**

PETITION FOR REHEARING

Now comes John H. Nowlin, Jr., Appellant, and files this his Petition for Rehearing and in support thereof would respectfully show unto the Court the following, to-wit:

1. The Court should reconsider its position that Appellee obtained jurisdiction over the parties by placing copy of notices which were posted in the Court file without doing anything further to prove jurisdiction.

2. The Court should reconsider its position that Appellee obtained jurisdiction over the subject matter because it failed to record the annexation ordinance in its minute book immediately after passage.

3. The Court should reconsider its position in holding that the annexation as allowed by the Chancellor was reasonable in view of the uncontroverted fact that the Appellee's ability to make improvements as promised in the

A14

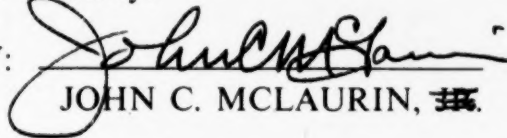
Areas I, II, and III is largely dependent upon the Appellee's continued success in obtaining federal funds.

Respectfully submitted,

JOHN H. NOWLIN, Jr., Appellant

BY: McLAURIN & McLAURIN,
His Attorneys

BY:


JOHN C. MCLAURIN, ~~III~~

A15

APPENDIX C

IN THE SUPREME COURT OF MISSISSIPPI

NO. 51,016

WEDNESDAY, JANUARY 10, 1979, COURT SITTING:

**IN RE: EXTENSION OF THE BOUNDARIES OF
THE CITY OF PEARL, MISSISSIPPI**

This cause this day came on to be heard on Petition for Rehearing filed herein and this Court having sufficiently examined and considered the same En Banc and being of the opinion that the same should be denied doth order that said Petition be and the same is hereby denied.

APPENDIX D

**IN THE CHANCERY COURT OF RANKIN COUNTY
IN THE MATTER OF THE EXTENSION OF THE
BOUNDARIES OF PEARL, MISSISSIPPI**

NO. 15,717

**AMENDED DECREE RATIFYING, APPROVING
AND CONFIRMING THE BOUNDARIES AND
LIMITS OF THE CITY OF PEARL MISSISSIPPI, AS
MODIFIED BY THE COURT**

This cause came on for hearing and was heard by the Chancery Court of Rankin County, Mississippi, in the Rankin County Courthouse, at Brandon, Mississippi, upon the Petition of the City of Pearl, a Mississippi municipal corporation domiciled in Rankin County, Mississippi, praying for the ratification, approval and confirmation by the Court of an enlargement and expansion of the boundaries of said City of Pearl as set forth in an Ordinance adopted by the Mayor and Board of Aldermen of said City on October 20, 1977, and upon due, proper and legal notice and process to all parties and the objections filed by the various objecting parties or groups which are of record and on file in this cause, and the Court having heard and considered said petition, the objections, and all proof, both oral and documentary, offered by the Petitioner and all of the interested parties, and having rendered its opinion on February 23, 1978, making the following findings, to-wit:

That the petition before the Court was filed in accordance with the provisions of an ordinance duly and legally adopted by the Mayor and Board of Aldermen of

the City of Pearl, Mississippi, on October 20, 1977, entitled "AN ORDINANCE TO ENLARGE, EXTEND, MODIFY AND DEFINE THE CORPORATE LIMITS AND BOUNDARIES OF THE CITY OF PEARL, RANKIN COUNTY, MISSISSIPPI", a certified copy of said ordinance is attached to said petition of the said City of Pearl as Exhibit "A"; that said ordinance was duly published for the time and in the manner required by law; the named defendants, the City of Brandon, Rankin County, Mississippi, the City of Richland, Rankin County, Mississippi, the City of Flowood, Rankin County, Mississippi, the City of Jackson, Hinds County, Mississippi, being municipalities whose boundaries are within three miles of the corporate limits of the City of Pearl, Mississippi, as proposed in said ordinance, were duly and legally served with process in the manner and for the time required by law; that the petition of the City of Pearl in this cause conforms to all of the requirements of the statutes and laws of the State of Mississippi controlling the proposed enlargement and extension of the boundaries of the said City of Pearl; that there is attached to said petition, in addition to the above described ordinance, as Exhibit "B", a map or plat of the municipal boundaries of the said City of Pearl as they would exist in the event the enlargement and extension prayed for in the petition be ratified, approved and confirmed; that the application of the petitioner to fix a date for a hearing on said petition was duly and legally filed by the City of Pearl as is required by law and that an order thereon was duly entered by this Court on the 3rd day of October, 1977, fixing 9:00 o'clock a.m. on the 7th day of November, 1977, at the Rankin County Courthouse, in the City of Brandon, Rankin County, Mississippi, as the time and place at which a hearing on said petition would be held and at which hearing all persons

interested in, affected by or being aggrieved by said proposed enlargement and extension of the boundaries and limits of the City of Pearl, Mississippi, would be heard; that the Order of the Court entered upon said application further directed that notice of said hearing be given by the Clerk of this Court as is required by law; the Court further finds that proper and legal notice of said hearing was given by the Clerk of this Court for the time and in the manner required by law, and proof thereof is on file with the papers in this cause; that certain objections to said proposed enlargement of the boundaries of the said City of Pearl were filed pursuant to said notice; that on the 16th day of November, 1977, the Chancellor of the Chancery District recused himself and appointed Honorable John C. Love, Jr., Special Chancellor, to hear the cause; that process in the manner, form and time as required by law was served upon the City of Jackson, Mississippi, the City of Brandon, Mississippi and the City of Richland, Mississippi and each of the said municipalities answered and filed objections to the annexation as prayed for in the petition for annexation, and agreements having been made by each of the said Cities of Jackson, Brandon and Richland with the City of Pearl, Mississippi, petitioner herein, and the answers and objections having been withdrawn by the said Cities of Jackson, Brandon and Richland and contracts and agreements having been entered into by and between the said three municipalities with the City of Pearl as to the area to be annexed, and other matters as contained in said contracts, and the Court herein having ratified and confirmed the said contracts and agreements, copies of which are filed in this cause; that this Court began the hearing of the evidence in support of the petition and the objections on the 14th day of February, 1978, which hearings were continued until the Petitioner and all

interested parties rested their cases on the 22nd day of February, 1978, and the Court having heard arguments of counsel and having been advised as to the law and as to the standards, requirements and criteria for the expansion of a municipality and having determined and found that the City of Pearl, Mississippi, met those standards, requirements and criteria as prescribed by the Supreme Court of Mississippi, and the City of Pearl having failed to offer any proof as to the reasonableness of the annexation of the areas described in the said contracts by the City of Pearl with the said Cities of Jackson, Brandon and Richland, and the Court having rendered its opinion as hereinabove set forth, concludes and so holds, that the proposed enlargement and extension of the boundaries of the City of Pearl, as set forth in the Ordinance of October 3, 1977, exhibited to the Petition as Exhibit "A" is reasonable except as modified by this Court by deleting therefrom the following described lands situated in Rankin County, Mississippi, and more particularly described as follows to-wit:

AREA NUMBER 2

PARCEL NUMBER 1

All that part of Section 30, Township 5 North, Range 2 East, Rankin County, Mississippi, more particularly described as follows: begin at the point of intersection of the West line of said Section 30, with the centerline of Ware Street as now existing; run thence Easterly along the said centerline of Ware Street to its point of intersection with the centerline of Weems Street as now existing; run thence Southerly along the said centerline of Weems

Street to its point of termination; continue thence Southerly along the centerline of Weems Street extended to a point on the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of said Section 30; run thence Easterly along the said line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of Section 30 to a point on the centerline of Pearson Road as now existing; run thence Southerly along the said centerline of Pearson Road to a point on the South line of said Section 30; run thence Westerly along the said South line of Section 30 to the Southwest corner of said Section 30; run thence Northerly along the aforesaid West line of Section 30 to the point of beginning.

PARCEL NUMBER 2

Begin at the point of intersection of the South line of Section 30, Township 5 North, Range 2 East, Rankin County, Mississippi, with the centerline of Pearson Road, as said road exists this date, run thence Northerly along the said centerline of Pearson Road to its point of intersection with the North bank of Richland Creek, as said creek exists this date; run thence Southeasterly and along the said North bank of Richland Creek through Sections 30 and 29, Township 5 North, Range 2 East, to its points of intersection with the South line of said Section 29; run thence Westerly and along the said South line of Section 29 and the aforesaid South line of Section 30 to the point of beginning.

PARCEL NUMBER 3

Beginning at the point of intersection of the West line of the East One-Half (E 1/2) of the East One-Half (E 1/2) of Section 21, Township 5 North, Range 2 East, Rankin County, Mississippi, with the South right-of-way line of Interstate Highway 20, as said highway exists this date, run thence Northeasterly and along the said South right-of-way line of Interstate Highway 20 through Sections 21, 22 and 15, Township 5 North, Range 2 East, to the West right-of-way line of a local road (now identified as the East entrance road to Whitfield), run thence Southerly and along the said West right-of-way line of local road to the North line of aforesaid Section 22; run thence East and along the said North line of Section 22 to the corner common to Sections 14, 15, 22 and 23, Township 5 North, Range 2 East; run thence South and along the East line of said Section 22 and the East line of Section 27, Township 5 North, Range 2 East, to the North boundary of the Mississippi State Hospital property, said point being located 840 feet, more or less, North of the Southeast corner of the Northeast Quarter (NE 1/4) of said Section 27; run thence West and along the said North boundary of the Mississippi State Hospital property and parallel to the North line of said Section 27 to the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of said Section 27; run thence South and along the said half section line to the Southeast corner of the North-

west Quarter (NW 1/4) of said Section 27; run thence West and along the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of said Section 27 to the Southwest corner of the Southeast Quarter (SE 1/4) of the Northwest Quarter (NW 1/4) of said Section 27; run thence North and along the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of the Northwest Quarter (NW 1/4) of said Section 27 to the centerline of a public road located in the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) of said Section 27; run thence West and along the said centerline of public road and the North boundary of the Mississippi State Hospital property to the West line of the East One-Half (E 1/2) of the Northeast Quarter (NE 1/4) of Section 28, Township 5 North, Range 2 East; run thence Northerly and along the said West line of the East One-Half (E 1/2) of the Northeast Quarter (NE 1/4) of Section 28 and the aforesaid West line of the East One-Half (E 1/2) of the East One-Half (E 1/2) of Section 21, to the point of beginning.

AREA NUMBER 3

PARCEL NUMBER 1

Begin at the point of intersection of the North right-of-way line of Old Brandon Road as now existing with the East line of the West One-Half (W 1/2) of the West One-Half (W 1/2) of Section 12, Township 5 North, Range

2 East, Rankin County, Mississippi; run thence Northerly along the said East line of the West One-Half (W 1/2) of the West One-Half (W 1/2) of Section 12 and the East line of the West One-Half (W 1/2) of the Southwest one-quarter (SW 1/4) of Section 1, Township 5 North, Range 2 East, to a point on the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of said Section 1; run thence Westerly along the said line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of Section 1, to a point on the West line of said Section 1; run thence Northerly along the said West line of Section 1 to the corner common to Sections 1 and 2, Township 5 North, Range 2 East, and Sections 35 and 36, Township 6 North, Range 2 East; run thence Westerly along the line between said Sections 2 and 35 to a point on the East Corporate Limits line of the City of Jackson, Mississippi; run thence South 03 degrees 10 minutes West for a distance of 806.8 feet to a point; run thence South 22 degrees 06 minutes East for a distance of 2,630.8 feet to a point; run thence South 67 degrees 54 minutes West for a distance of 749.8 feet to a point; run thence South 22 degrees 06 minutes East for a distance of 1,199.8 feet to a point; run thence South 67 degrees 54 minutes West for a distance of 2,366.6 feet to a point; run thence South 08 degrees 51 minutes 36 seconds East for a distance of 1,202.0 feet to a point; run thence South 00 degrees 26 minutes East for a distance of 1,030.0 feet to a point;

run thence North 89 degrees 16 minutes West for a distance of 275.0 feet to a point; run thence South 04 degrees 29 minutes West to a point on the said North right-of-way line of Old Brandon Road; run thence Easterly along the said North right-of-way line of Old Brandon Road to the point of beginning.

PARCEL NUMBER 2

Beginning at the corner common to Sections 1 and 2, Township 5 North, Range 2 East, Rankin County, Mississippi, and Sections 35 and 36, Township 6 North, Range 2 East, run thence Easterly and along the line between said Sections 1 and 36 to the corner common to said Sections 1 and 36, Section 31, Township 6 North, Range 3 East, and Section 6, Township 5 North, Range 3 East; run thence Southerly and along the line between said Sections 1 and 6 and the line between Section 12, Township 5 North, Range 2 East, and Section 7, Township 5 North, Range 3 East, to the South line of the North One-Half (N 1/2) of the North One-Half (N 1/2) of said Section 12; run thence Westerly and along the said South line of the North One-Half (N 1/2) of the North One-Half (N 1/2) of Section 12 to the West line of the East One-Half (E 1/2) of the West One-Half (W 1/2) of said Section 12; run thence Northerly and along the said West line of the East One-Half (E 1/2) of the West One-Half (W 1/2) of Section 12 and the West line of the

East One-Half (E 1/2) of the West One-Half (W 1/2) of aforesaid Section 1 to the South line of the North One-Half (N 1/2) of said Section 1; run thence Westerly and along the said South line of the North Half (N 1/2) of Section 1 to the West line of said Section 1; run thence Northerly and along the said West line of Section 1 to the point of beginning.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court as follows to-wit:

1. That the Petitioner has met all requirements under the statutes and the laws of the State of Mississippi in such cases as made and provided; and the technical objections and each of them raised by the objectors to the legal sufficiency of the ordinance of the City of Pearl, dated October 3, 1977, entitled "AN ORDINANCE TO ENLARGE, EXTEND, MODIFY AND DEFINE THE CORPORATE LIMITS AND BOUNDARIES OF THE CITY OF PEARL, RANKIN COUNTY, MISSISSIPPI" and to the procedure used by said Mayor and Board of Aldermen in adopting it are without merit, and the same are hereby overruled and said Ordinance is declared to be legal and valid.

2. That the proposed enlargement and expansion of the boundaries of the City of Pearl, Mississippi, as set forth in the Petition and ordinance thereto attached as Exhibit "A" is found to be reasonable as herein modified and that Petitioner met the burden of proof in determining that the expansion is required by the public convenience and necessity as modified by the description of the territory to be annexed as set forth in paragraph four (4) hereinafter.

3. That the City of Pearl is in a position to, and will, furnish reasonable public and municipal services in the territory here approved for annexation as described in paragraph four (4) hereof with a reasonable time; and that the improvements set out in the Ordinance will be completed within a reasonable time, not to exceed six (6) years from the effective date of this decree, unless delayed by war or military preparedness.

4. That the proposed enlargement and expansion of the boundaries of the City of Pearl as described in the petition and ordinance attached as Exhibit "A" is hereby modified to provide for the enlargement and expansion of the corporate limits and boundaries of the said City of Pearl, Rankin County, Mississippi, by the annexation of the following described lands only, lying and being situated in Rankin County, Mississippi, and said enlargement, as modified is hereby declared to be reasonable, and the same is hereby approved, ratified and confirmed, to-wit:

AREA NUMBER 1

Commence at the point of intersection of the North right-of-way line of U.S. Highway 80, as said highway exists this date, with the West line of Section 18, Township 5 North, Range 2 East, Rankin County, Mississippi, and from this point run thence Easterly along the said North right-of-way line of U.S. Highway 80 to a point that is 300 feet measured Easterly from an extension Northerly of the East right-of-way line of Mississippi Highway 468 (Pearson Road) as said East right-of-way line existed on December 12, 1969; run

thence Northerly and parallel to the said West line of Section 18 to a point on the North line of said Section 18 and the point of beginning:

Continue thence Northerly and parallel to the West line of Section 7, Township 5 North, Range 2 East, to a point on the North line of the Southwest Quarter (SW 1/4) of said Section 7; run thence East along the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of said Section 7 to the Southwest corner of the Northeast Quarter (NE 1/4) of said Section 7; run thence North and along the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of said Section 7 and the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of Section 6, Township 5 North, Range 2 East, to a point which is 400 feet North of the South line of said Section 6; run thence Easterly and parallel to the South line of said Section 6 to a point on the West line of the East One-Half (E 1/2) of the East One-Half (E 1/2) of said Section 6; run thence North and along the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of the East One-Half (E 1/2) of said Section 6 to the Northwest corner of the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of said Section 6; run thence East and along the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of the Southeast Quarter (SE 1/4) of said Section 6 and the line between the North One-Half (N 1/2) and the South

One-Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 5, Township 5 North, Range 2 East, to the Northeast corner of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of said Section 5; run thence South and along the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of the Southwest Quarter (SW 1/4) of said Section 5 to a point on the South line of said Section 5; run thence West and along the said South line of Section 5 to the corner common to Sections 5, 6, 7 and 8, Township 5 North Range 2 East; run thence South and along the East line of said Section 7 to the corner common to Sections 7, 8, 17 and 18, Township 5 North, Range 2 East, run thence West and along the South line of said Section 7 to the point of beginning.

AREA NUMBER 2

Beginning at the corner common to Sections 24 and 25, Township 5 North, Range 1 East, and Sections 19 and 30, Township 5 North, Range 2 East, Rankin County, Mississippi, run thence East and along the North line of said Section 30 to a point on the East right-of-way line of Mississippi Highway 468 (Pearson Road), as said highway exists this date; run thence Northerly along the said East right-of-way line of Mississippi Highway 468 (Pearson Road) to the South boundary of Cunningham Heights Subdivision, as said subdivision is recorded in Plat Book 3 at Page 43 thereof in the office of the Chancery Clerk of

Rankin County at Brandon, Mississippi; run thence Easterly and along the said South boundary of Cunningham Heights Subdivision to a point on the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of the Northeast Quarter (NE 1/4) of said Section 19; run thence South and along the said line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of the Northeast Quarter (NE 1/4) and the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of the Southeast Quarter (SE 1/4) of said Section 19 to the Northwest corner of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of said Section 19; run thence East and along the line between the North One-Half (N 1/2) of the South One-Half (S 1/2) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of said Section 19 to the Northeast corner of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of said Section 19; run thence South and along the line between said Section 19 and Section 20, Township 5 North, Range 2 East, to the Northwest corner of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of said Section 20; run thence East and along the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of the Southwest Quarter (SW 1/4) of said Section 20 to the Northeast corner of the Southeast Quarter (SE 1/4) of

the Southwest Quarter (SW 1/4) of said Section 20; run thence North and along the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of said Section 20 to the South right-of-way line of Interstate Highway 20; run thence Easterly and along the said South right-of-way line of Interstate Highway 20 through Section 20 and 21, Township 5 North, Range 2 East, to the East line of the West One-Half (W 1/2) of the East One-Half (E 1/2) of said Section 21; run thence Southerly and along the said East line of the West One-Half (W 1/2) of the East One-Half (E 1/2) of Section 21 and the East line of the West One-Half (W 1/2) of the East One-Half (E 1/2) of Section 28, Township 5 North, Range 2 East, to the Southeast corner of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of said Section 28; run thence West and along the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of the Southeast Quarter (SE 1/4) of said Section 28 to the Southwest corner of the said Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of said Section 28; run thence South and along the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of said Section 28 and the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of Section 33, Township 5 North, Range 2 East, to the South right-of-way line of the Illinois Central Gulf Railroad, as said railroad exists this date; run thence Northwesterly and

along the said South right-of-way line of the Illinois Central Gulf Railroad to the South line of Section 28, Township 5 North, Range 2 East; run thence West and along the South line of Sections 28 and 29, Township 5 North, Range 2 East, to the North bank of Richland Creek, as said creek exists this date; run thence Northwesterly and along the said North bank of Richland Creek through Sections 29 and 30 Township 5 North, Range 2 East, to the centerline of Pearson Road, as said road exists this date; run thence Northerly and along the said centerline of Pearson Road to the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of said Section 30; run thence Westerly and along the said line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of Section 30, to the centerline of Weems Street extended, as said street exists this date; run thence Northerly and along the said centerline of Weems Street extended and the centerline of said Weems Street to its point of intersection with the centerline of Ware Street, as said street exists this date; run thence Westerly and along the said centerline of Ware Street to the West line of said Section 30; run thence Northerly and along the said West line of Section 30 to the corner common to Sections 19 and 30, Township 5 North, Range 2 East, and Sections 24 and 25, Township 5 North, Range 1 East, said point being the point of beginning.

AREA NUMBER 3

Beginning at the point of intersection of the West line of Section 11, Township 5 North, Range 2 East, Rankin County, Mississippi, with the North right-of-way line of U.S. Highway 80, as said highway exists this date, run thence South 89 degrees 54 minutes East for a distance of 200.76 feet to a point; run thence North 05 degrees 06 minutes East for a distance of 5.4 feet to the point of curvature (P.C.) of a 02 degree 38 minute curve to the right; run thence along said 02 degree 38 minute curve to the right for a distance of 684.3 feet to the point of tangency (P.T.) of said curve; run thence North 23 degrees 11 minutes 40 seconds East for a distance of 375.45 feet to a point; run thence North 23 degrees 47 minutes East for a distance of 147.2 feet to a point; run thence South 89 degrees 54 minutes East for a distance of 1,093.4 feet to a point; run thence North for a distance of 67.4 feet to a point; run thence North 00 degrees 34 minutes West for a distance of 1,177.43 feet to a point; run thence North 89 degrees 16 minutes West for a distance of 648 feet to a point; run thence North 23 degrees 11 minutes 40 seconds East to a point on the North right-of-way line of Old Brandon Road, as said road exists this date; run thence Easterly and along the said North right-of-way line of Old Brandon Road through Sections 11 and 12, Township 5 North, Range 2 East, to a point on the West line of the East One-Half (E 1/2) of the West One-Half (W 1/2) of

said Section 12; run thence North and along the said West line of the East One-Half (E 1/2) of the West One-Half (W 1/2) of Section 12 to a point on the North line of the South One-Half (S 1/2) of the North One-Half (N 1/2) of said Section 12; run thence East and along the said North line of South One-Half (S 1/2) of the North One-Half (N 1/2) of Section 12 to a point on the East line of said Section 12; run thence South and along the said East line of Section 12 and the East line of Section 13, Township 5 North, Range 2 East, to the South right-of-way line of Interstate Highway 20; run thence Southwesterly and along the said South right-of-way line of Interstate Highway 20 through Sections 13 and 14, Township 5 North, Range 2 East, to the West line of the East One-Half (E 1/2) of the Southwest Quarter (SW 1/4) of said Section 14; run thence North between the East One-Half (E 1/2) and the West One-Half (W 1/2) of the Southwest Quarter (SW 1/4) of said Section 14 to the North right-of-way line of Interstate Highway 20; run thence Westerly and Northwesterly and along the said North right-of-way line of Interstate Highway 20 to the East right-of-way line of Mississippi Highway 475; run thence Northerly and along the said East right-of-way line of Mississippi Highway 475 for a distance of 169.78 feet to a point, said point being located on the present corporate limits of the City of Pearl, Mississippi; run thence North 70 degrees 52 minutes West for a distance of 150 feet to the center-

line of said Mississippi Highway 475; run thence North 19 degrees 08 minutes East and along the said centerline of Mississippi Highway 475 for a distance of 183.8 feet to the point of curvature (P.C.) of a 04 degree 00 minute curve to the left, said curve having a central angle of 43 degrees 04 minutes West run thence along said 04 degree 00 minute curve to the left for a distance of 1,077.1 feet to the point of tangency (P.T.) of said curve; run thence North 23 degrees 57 minutes West for a distance of 851.2 feet to the point of curvature (P.C.) of a 02 degree 00 minute curve to the right, said curve having a central angle of 16 degrees 08 minutes 01 second; run thence along said 02 degree 00 minute curve to the right for a distance of 806.7 feet to the point of tangency (P.T.) of said curve; run thence North 07 degrees 49 minutes West for a distance of 901.6 feet to the South right-of-way line of U. S. Highway 80; run thence Easterly and along the said South right-of-way line of U. S. Highway 80 for a distance of 124.8 feet to the West line of Section 14, Township 5 North, Range 2 East; run thence North and along the said West line of Section 14 and the West line of Section 11, Township 5 North, Range 2 East, to the point of beginning.

The corporate limits and boundaries of the City of Pearl, Mississippi, as enlarged, extended and fixed by the Ordinance of October 3, 1978, as modified by this Decree shall be as follows, to-wit:

Beginning at the corner common to Sections 24 and 25, Township 5 North, Range 1 East, and Sections 19 and 30, Township 5 North, Range 2 East, Rankin County, Mississippi, run thence West and along the South line of said Section 24 to the South right-of-way line of the Illinois Central Gulf Railroad, as said railroad exists this date; run thence Northwesterly and along the South and West right-of-way line of the said Illinois Central Gulf Railroad through Sections 24, 23 and 14, Township 5 North, Range 1 East, to the North right-of-way line of U. S. Highway 80, as said highway exists this date; run thence Easterly and along the said North right-of-way line of U. S. Highway 80 through Sections 14 and 13, Township 5 North, Range 1 East, and Section 18, Township 5 North, Range 2 East, to a point which is 300 feet measured Easterly from an extension Northerly of the East right-of-way line of Mississippi Highway 468 (Pearson Road), as said East right-of-way line existed on December 12, 1969; run thence Northerly and parallel to the West lines of said Section 18 and Section 7, Township 5 North, Range 2 East, to a point on the North line of the Southwest Quarter (SW 1/4) of said Section 7; run thence East and along the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of said Section 7 to the Southwest corner of the Northeast Quarter (NE 1/4) of said Section 7; run thence North and along the line between the East One-Half (E 1/2) and West One-Half (W 1/2) of said Section 7 and the

line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of Section 6, Township 5 North, Range 2 East, to a point which is 400 feet North of the South line of said Section 6; run thence Easterly and parallel to the South line of said Section 6 to a point on the West line of the East One-Half (E 1/2) of the East One-Half (E 1/2) of said Section 6; run thence North and along the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of the East One-Half (E 1/2) of said Section 6 to the Northwest corner of the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of said Section 6; run thence East and along the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of the South One-Half (S 1/2) of Sections 6, 5 and 4, Township 5 North, Range 2 East, to the Northwest corner of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 3, Township 5 North, Range 2 East, said point being marked by a concrete monument; run thence East and along the North line of the said Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 3 for a distance of 113.19 feet to the West right-of-way line of United Gas Pipeline Company; run thence Southeasterly and along the said West right-of-way line of United Gas Pipeline Company through Sections 3 and 10, Township 5 North, Range 2 East to a point on the North right-of-way line of Old Brandon Road, as said road existed on November 7, 1973, said

point being 440.64 feet measured Easterly along said North right-of-way line of Old Brandon Road from the point where the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of said Section 10 intersects with said North right-of-way line of Old Brandon Road; run thence Easterly and along said North right-of-way line to a point designated as being measured Westerly 1,796.40 feet along said North right-of-way line from the point where the East line of said Section 10 intersects said North right-of-way line of Old Brandon Road; continue thence Easterly and along the said North line of Old Brandon Road to the said East line of Section 10; turn thence to the right through an angle of 88 degrees 42 minutes and run South 00 degrees 34 minutes East and along said East line of Section 10 for a distance of 449 feet; turn thence to the left through an angle of 21 degrees 30 minutes and run South 22 degrees 04 minutes East for a distance of 949.5 feet; turn thence to the right through an angle of 45 degrees 16 minutes and run South 23 degrees 12 minutes West for a distance of 436 feet to the point of curvature (P.C.) of a 02 degree 25 minute curve to the left; run thence along said 02 degree 25 minute curve to the left for a distance of 747.5 feet to the point of tangency (P.T.) of said curve; run thence South 05 degrees 06 minutes West for a distance of 22.9 feet to the North right-of-way line of present U.S. Highway 80; said point being on the said East line of Section 10; run

thence South 89 degrees 54 minutes East for a distance 200.76 feet to a point; run thence North 05 degrees 06 minutes East for a distance of 5.4 feet to the point of curvature (P.C.) of a 02 degree 38 minute curve to the right; run thence along said 02 degree 38 minute curve to the right for a distance of 684.3 feet to the point of tangency (P.T.) of said curve; run thence North 23 degrees 11 minutes 40 seconds East for a distance of 375.45 feet to a point; run thence North 23 degrees 47 minutes East for a distance of 147.2 feet to a point; run thence South 89 degrees 54 minutes East for a distance of 1,093.4 feet to a point; run thence North for a distance of 67.4 feet to a point; run thence North 00 degrees 34 minutes West for a distance of 1,177.43 feet to a point; run thence North 89 degrees 16 minutes West for a distance of 648 feet to a point; run thence North 23 degrees 11 minutes 40 seconds East to a point on the North right-of-way line of Old Brandon Road, as said road exists this date; run thence Easterly and along the said North right-of-way line of Old Brandon Road through Sections 11 and 12, Township 5 North, Range 2 East, to a point on the West line of the East One-Half (E 1/2) of the West One-Half (W 1/2) of said Section 12; run thence North and along the said West line of the East One-Half (E 1/2) of the West One-Half (W 1/2) of Section 12 to a point on the North line of the South One-Half (S 1/2) of the North One-Half (N 1/2) of said Section 12; run thence

East and along the said North line of the South One-Half (S 1/2) of the North One-Half (N 1/2) of Section 12 to a point on the East line of said Section 12; run thence South and along the said East line of Section 12 and the East line of Section 13, Township 5 North, Range 2 East, to the South right-of-way line of Interstate Highway 20; run thence Southwesterly and along the said South right-of-way line of Interstate Highway 20 through Sections 13 and 14, Township 5 North, Range 2 East to the East right-of-way line of a local road (now identified as the East entrance to Whitfield); run thence Southerly and along the said East right-of-way line of local road to the South line of said Section 14; run thence West and along the said South line of Section 14 through the corner common to Sections 14, 15, 22 and 23, Township 5 North, Range 2 East, and across a county road to a point on the West right-of-way line of local road (now identified as the East entrance to Whitfield); run thence North and along the said West right-of-way line of local road to the South right-of-way line of Interstate Highway 20; run thence Southwesterly and along the said South right-of-way line of Interstate Highway 20 through Sections 15, 22 and 21, Township 5 North, Range 2 East, to a point on the East line of the West One-Half (W 1/2) of the East One-Half (E 1/2) of said Section 21; run thence South and along the said East line of the West One-Half (W 1/2) of the East One-Half (E 1/2) of Section 21 and the East line

of the West One-Half (W 1/2) of the East One-Half (E 1/2) of Section 28, Township 5 North, Range 2 East, to the Southeast corner of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of said Section 28; run thence West and along the line between the North One-Half (N 1/2) and the South One-Half (S 1/2) of the Southeast Quarter (SE 1/4) of said Section 28 to the Southwest corner of the said Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of said Section 28; run thence South and along the line between the East one-Half (E 1/2) and the West One-Half (W 1/2) of said Section 28 and the line between the East One-Half (E 1/2) and the West One-Half (W 1/2) of Section 33, Township 5 North, Range 2 East, to the South right-of-way line of the Illinois Central Gulf Railroad, as said railroad exists this date; run thence Northwesterly and along the said South right-of-way line of the Illinois Central Gulf Railroad to the South line of Section 28, Township 5 North, Range 2 East; run thence West and along the South line of Sections 28 and 29, Township 5 North, Range 2 East, to a point on the North bank of Richland Creek, as said creek exists this date; run thence Northwesterly and along the said North bank of Richland Creek through Sections 29 and 30, Township 5 North, Range 2 East, to a point on the centerline of Pearson Road, as said road exists this date; run thence Northerly and along the said centerline of Pearson Road to a point on the line between

the North One-Half (N 1/2) and the South One-Half (S 1/2) of said Section 30; run thence West and along the said line between the North One-Half (N 1/2) and South One-Half (S 1/2) of Section 30 to a point on the centerline of Weems Street extended, as said street exists this date; run thence Northerly and along the said centerline of Weems Street extended and the centerline of Weems Street to its point of intersection with the centerline of Ware Street, as said street exists this date; run thence Westerly and along the said centerline of Ware Street to a point on the West line of said Section 30; run thence North and along the said West line of Section 30 to the corner common to Sections 19 and 30, Township 5 North, Range 2 East, and Sections 24 and 25, Township 5 North, Range 1 East, said point being the point of beginning.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the corporate limits of the City of Pearl, Mississippi, are hereby extended and enlarged as provided herein and the Clerk of this Court shall, after the expiration of ten (10) days from the date of this Decree, if no appeal be taken from such Decree, forward to the Secretary of State of Mississippi a certified true copy of this Decree which shall be filed in the office of the Secretary and shall remain a permanent record thereof as is required by law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Petitioner, the City of Pearl, Mississippi, shall furnish the Clerk of this Court a map or plat of the boundaries of the City of

Pearl, Mississippi, as herein approved, ratified and confirmed, which said map or plat shall be recorded in the official Plat Book of Rankin County at Brandon, Mississippi.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that all costs of this proceeding, be assessed against the Petitioner, the City of Pearl, Mississippi.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that this amended Decree shall supersede and take the place of that certain Decree heretofore dated March 1, 1978 and filed in this cause as of that date.

SO ORDERED, ADJUDGED AND DECREED this the 7th day of March, 1978.

SPECIAL CHANCELLOR

APPENDIX E

IN THE CHANCERY COURT OF RANKIN COUNTY MISSISSIPPI

NO. 15,717

IN RE: EXTENSION OF THE BOUNDARIES OF
THE CITY OF PEARL, MISSISSIPPI

MOTION TO DISMISS

Now comes John H. Nowlin, Jr., Respondent in the above styled and numbered Cause and moves the Court to dismiss the Petition for the Extension of the Boundaries of the City of Pearl, Mississippi, and For Ratification and Confirmation of an Ordinance Extending and Enlarging Such Boundaries, filed herein by the City of Pearl, Petitioner, for the following reason:

That the Ordinance for Annexation upon which the Petition is founded and which is shown as Exhibit "A" to the Petition was not entered in the Ordinance Book of the City of Pearl immediately after its passage nor before the filing of the Petition and that the Ordinance has not been entered in the Ordinance Book as of the date of the filing of this Motion and that the said Ordinance is void and of no effect.

McLaurin, Kelly & McLaurin
Attorneys for Respondent

By: _____
JOHN C. McLAURIN

CERTIFICATE

I, John C. McLaurin, McLaurin, Kelly & McLaurin, Attorneys for Respondent, John H. Nowlin, Jr., hereby certify that I have this day mailed by U.S. Mail, postage prepaid a true and correct copy of the above and foregoing Motion to Dismiss to the Hon. William A. Bacon, at his usual business address: Bacon, Smith & Jernigan, P.O. Box 15, Jackson, Mississippi, 39205; to the Hon. Lem Adams, III, at his usual business address: 220 Timber Street, Brandon, Mississippi, 39042; to the Hon. Robert E. Perry, at his usual business address: Perry, Phillips, Crockett & Morrison, P.O. Box 22628, Jackson, Mississippi, 39204; to the Hon. Alfred G. Nicks, Jr., at his usual business address: Smith & Henderson, Pearl Profession Building, Pearl, Mississippi, 39208, and to the Hon. Charles H. Ramberg, at his usual business address: Central Mississippi Legal Services, P.O. Box 401, Brandon, Mississippi, 39042.

This the ___ day of November, 1977.

JOHN C. McLAURIN

APPENDIX F
IN THE CHANCERY COURT OF RANKIN COUNTY,
MISSISSIPPI

CAUSE NO. 15,717

IN RE: EXTENSION OF THE BOUNDARIES
OF THE CITY OF PEARL, MISSISSISSIPPI

ORDER

There came on to be considered by this Court at a hearing held on November 16, 1977, a motion to dismiss filed by John H. Nowlin, Jr., et al, which said motion sought a dismissal on the grounds that the ordinance attached to the Petition filed in this cause by the City of Pearl, had not been entered in the Ordinance Book of the City of Pearl. The Court having considered said motion and the arguments made by all parties concerning the same, is of the opinion that the motion should be overruled for the following reasons:

The parties stipulated that the annexation ordinance in question was not filed in the Ordinance Book of the City of Pearl as of November 1, 1977, but they further stipulated that it was properly signed and was included in the Minutes of the meeting of the Board of Aldermen of the City of Pearl held on September 30, 1977. Movant argued that the Ordinance was void because it did not appear in the Ordinance Book as required under Section 21-13-13. The issue here confronting the Court is therefore whether the Ordinance to expand the municipal corporate limits must be placed in the Ordinance Book before the Petition to Court called for in Section 21-1-29, can be filed or whether it does not have to

be placed in the Ordinance Book until it becomes effective after Court approval as provided in Section 21-1-33.

Section 21-13-11 and Section 21-13-13, deal with municipal ordinances in general and contain provisions as to what shall be done to make them effective and when they become effective. Section 21-1-33 makes a different provision for the effectiveness of annexation ordinances since they must be approved by the Chancery Court while other ordinances do not carry this requirement.

It is clear that though actions of a municipal corporation can only be taken by the governing authority by items duly entered upon their minutes, that there are two distinct types of action that may be taken by a municipal corporation. It appears that there has been some confusion in legislation relative to the terminology used in distinguishing these, but a review of the case law makes it clear that an ordinance is in the nature of a permanent law of a municipality and this is contrasted to a resolution or order of the municipality which must only be included in the minutes and which deals with the day-to-day operation of the municipal government as contrasted to permanent regulations. In the case of Rich vs. McLaurin, 35 So. 337, the Supreme Court of this State clearly noted this distinction when it said ordinances "which are in their nature laws of the municipality," must be placed in the ordinance book while, "mere orders or decrees temporary in their nature," do not have to be included. In the case of Evans vs. City of Jackson, 30 So. 2nd, 315, the Court also made this distinction and said that an order is temporary while the ordinance is permanent. A review of Section 21-13-13, upon which the movants rely, reaffirms this clear distinction in that it says, "The ordinances which are to be recorded in such ordinance book are those which are in their

nature laws of the municipality and not mere resolutions, orders or decrees of a temporary nature." Such Section also indicates that when an ordinance is adopted, it must be duly included in the Minutes of the municipality and then in addition it must be included in the ordinance book. These cases and statutes make it clear that it is the intent of the statute only to require that the actions of the City which are in the nature of permanent laws be included in an ordinance book which is in effect a codification of the permanent laws of the municipality.

In the case of City of Biloxi vs. Cawly, 278 So. 2nd 389, the issue of the validity of an annexation ordinance was raised and the Court found it to be valid when it was not signed within 10 days, but was included in the minutes. The Court there recognized that annexation ordinances are different from other ordinances and said, "Annexation ordinances have been placed in a special category." The Court went further to say, "It is to be doubted that an annexation ordinance should be recorded in the Ordinance Book until after it shall have been approved by a decree of the Chancery Court in a statutory proceeding." Though this last statement was dicta in that case, this Court having considered the above cases and statutes agrees with it. This is especially true when it is noted that Section 21-13-13 upon which the Movants rely, makes it clear that only those acts of the municipality which are in the nature of laws are to be included in the ordinance book. Here the annexation ordinance is not law for it has not been approved by the Court as required by Statute and this Court is of the opinion that Section 21-13-13, does not intend to require the inclusion of an ordinance in the book prior to its approval when it becomes the law of the municipality, therefore, this Court is of the opinion that the Statute does not require the inclusion of

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this ordinance until approved by the Court when it would become a law of the municipality and is of the opinion that this motion should be overruled.

This the 1st day of December, 1977.

SPECIAL CHANCELLOR

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APPENDIX G

**IN THE CHANCERY COURT OF RANKIN COUNTY,
MISSISSIPPI**

CAUSE NO. 15,717

**IN RE: EXTENSION OF THE BOUNDARIES
OF THE CITY OF PEARL, MISSISSIPPI**

**ORDER OVERRULING MOTION TO DISMISS
FOR FAILURE TO RECORD ORDINANCE IN ORDI-
NANCE BOOK**

This day this cause came on to be heard on Motion of John H. Nowlin, Jr., et als to dismiss the Annexation Petition herein because of the fact that the Annexation Ordinance as of November 1, 1977, had not been recorded in the Ordinance Book of the City of Pearl even though such Ordinance had been regularly adopted by the Mayor and Board of Aldermen of Pearl and had been recorded in the City's minute book and had been properly published in the Pearl Press;

And the Court having heard and considered the Motion and having heard arguments of counsel, took the said Motion to Dismiss under advisement.

Thereafter, the Court rendered its written opinion which has been filed in this cause and this Court now holds that the Motion to Dismiss herein is not well taken for the reasons set forth in the Court's opinion, and holds that the Motion to Dismiss herein should be overruled;

**NOW, THEREFORE, IT IS HEREBY OR-
DERED, ADJUDGED AND DECREED that the Mo-**

tion of John H. Nowlin, et als, to Dismiss the Annexation Proceedings herein for failure to record the Annexation Ordinance in the Pearl Ordinance Book prior to its approval by this Court be, and the same is, hereby dismissed.

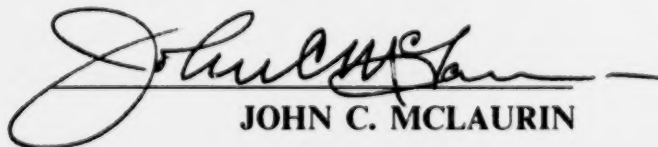
ORDERED, ADJUDGED AND DECREED this
December 14, 1977.

SPECIAL CHANCELLOR

CERTIFICATE

I, John C. McLaurin, McLaurin & McLaurin, Attorneys for Petitioner, John H. Nowlin, Jr., do hereby certify that I have this day mailed by U. S. Mail, postage pre-paid, ³ true and correct ^{copies} of the above and foregoing Petition for Writ of Certiorari to the Hon. William A. Bacon, Attorney for Respondent, City of Pearl, Mississippi, at his usual business address: Bacon, Stone, Jernigan, & Goodman, P. O. Box 15, Jackson, Mississippi 39205.

This the 1 day of April, 1979.


JOHN C. MCLAURIN

APR 18 1979

MICHAEL ROBAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1525

IN RE: EXTENSION OF THE BOUNDARIES OF THE
CITY OF PEARL, MISSISSIPPI

JOHN H. NOWLIN, JR.,

Petitioner,

vs.

CITY OF PEARL, MISSISSIPPI,

Respondent.

OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

WILLIAM A. BACON

BACON, STONE, JERNIGAN AND GOODMAN

Post Office Box 15

Jackson, Mississippi 39205

601-355-3451

Attorneys for Respondent

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1525

IN RE: EXTENSION OF THE BOUNDARIES OF THE
CITY OF PEARL, MISSISSIPPI

JOHN H. NOWLIN, JR.,
Petitioner,

vs.

CITY OF PEARL, MISSISSIPPI,
Respondent.

**OPPOSITION TO THE PETITION FOR WRIT OF
CERTIORARI TO THE SUPREME COURT
OF MISSISSIPPI**

Respondent, City of Pearl files this its opposition to the Petition for Writ of Certiorari heretofore filed by the Petitioner in this cause.

QUESTION PRESENTED

The question presented in the Petition as stated by the petitioner herein is as follows:

1. Whether petitioner's right not to be deprived of his property without due process of law guaranteed by

the Fifth and Fourteenth Amendments to the Constitution of the United States was denied by the decision of the Supreme Court of Mississippi, which approved annexation of the City of Pearl.

The question as presented by the petitioner is broken down into two (2) sub-questions:

(1) The Supreme Court of Mississippi erroneously interpreted Section 13-1-145 of the Mississippi Code of 1972 annotated, in that said court held that the courts of Mississippi were vested with the jurisdiction to hear this cause without the introduction of oral testimony to the effect that notices had been posted in the proposed annexed areas, or the filing of an affidavit that this was done.

(2) By holding that it was not necessary for the Ordinance of Annexation to be recorded in the Ordinance Book of the Municipality until such time as the annexation had been approved by the courts of Mississippi.

REASONS FOR DENYING THE WRIT OF CERTIORARI

Jurisdiction of this Court for granting of a Writ of Certiorari to the highest court of a State is contained in 28 U.S.C. 1257 and Rule 19 of this Court.

It is familiar learning that review by a Writ of Certiorari is not a matter of right, but within the sound discretion of the Court and will be granted only in those instances provided for by the statute and aforesaid rule.

In the first place, the question involved herein is not one of substance, and can have little, if any, effect upon the law other than as it touches this particular municipality in the State of Mississippi.

Questions upon which this Court will grant the Writ of Certiorari must be important ones. *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74. The seriousness of a question is not sufficient within itself, for this Court to grant the Writ. *English v. Cunningham*, 361 U.S. 905, 907. Further, the concept of importance of a question regarding the granting or not granting of the Writ is important as it relates "to the public as distinguishing from importance to the parties involved". *Lane and Boler Corporation v. Western Well Works*, 261 U.S. 387, 393. It is to be seriously doubted as to whether or not there is another state which has the same statutory provisions regarding the posting of notices where a municipality plans to annex additional territory or that there are other states that have the same provisions regarding enrollment of Ordinances within a particular Ordinance Book.

Petitioners herein do not cite a single case which either holds or intimates that the procedure followed in this cause and approved by the Supreme Court of Mississippi even involves a Federal question.

The only two Federal decisions cited in the Petition for the Writ contain general statements regarding importance of due process clause of the United States Constitution, but in no way point to or deal with the particularities of the questions presented in this case.

It is submitted that general platitudes do not raise Federal questions and certainly fall far short of presenting a matter of substance which should be reviewed by this Court.

It is further respectfully submitted that the Supreme Court of Mississippi correctly decided the questions presented to it in this cause. The posting of notices in the proposed annexed area was in the nature of a summons

calling all interested parties into Court if they desired to contest the proposed annexed area.

It is universally accepted that when a summons has been served, the official making such service will note his return thereon. This is what was done in this particular case.

The purpose of a summons is to bring persons into court and in this particular instance they came. The record alone in this case consisted of thirteen (13) volumes of 2,158 pages, so it is apparent that the people interested not only came, but came in litigating mood. *In Re: Extension of the Boundaries of the City of Pearl, Mississippi, John H. Nowlin, Jr. v. City of Pearl*, 365 So. 2d 952, 956.

This Court has decided long ago that when a defendant in a Mississippi case who came and litigated a matter or so much as plead thereto, waived the service of notice regarding pendency of the litigation. *Walker v. Robbins*, 55 U.S. 584.

Primarily, the petitioner's entire Petition is a reargument of his case in regard to the construction of Mississippi Statutes and Mississippi decisions which were decided adversely to his contention by the Supreme Court of Mississippi. There simply is no Federal question presented or argued in his Petition in this case.

It is further the contention of the respondent that the Supreme Court of Mississippi correctly decided this case. It is not now and has never been the practice in the State of Mississippi or any other state, so far as the respondent knows, to introduce into evidence the summons and return of the official serving same, unless the return is attacked, which is not true in this case. It will be

noted by the Court, that the Petitioner does not deny or question in his Petition the fact that notices were published and the Deputy Sheriff made his return thereon, the same as he would do after the service of any kind of process. This is simply a matter of local procedure and State law.

Insofar as recording the Ordinance in the Ordinance Books is concerned, by no stretch of the imagination could this involve an important Federal question. To record an Ordinance in the Ordinance Book prior to the date of its effectiveness would mean that if the courts held the annexation to be void, the municipality would have to retract the recording of the Ordinance in the Ordinance Book and expunge the same therefrom.

By waiting and recording the Ordinance after it has run the gamut of the Courts is the only correct way to handle the matter for it is only then that in fact it becomes a valid Ordinance.

The meaning attributed by the highest court of a state to a statute of the state must be accepted by the United States Supreme Court on review as though it had been expressed in the statute. *Supreme Lodge, Knights of Pythias v. Meyer*, 265 U.S. 30, 32, *Swiss Oil Corporation v. Shanks*, 273 U.S. 407, 411-412 and *Keit v. Johnson*, 271 U.S. 1, 8.

Even if the Supreme Court of Mississippi had been in error in this cause, it does not mean the Petition for Writ of Certiorari should be sustained, for this Court does not sit primarily to correct errors in lower Court decisions. *Supreme Court Practice Fifth Edition*, Para. 4.18, page 297, *Robert L. Stern, Eugene Gressman*. To the same effect, *Ross v. Moffitt*, 417 U.S. 600, 616-617.

It is respectfully submitted the Writ of Certiorari meets neither criteria of Statute nor Rule 19 of this Court and should be denied.

Respectfully submitted,

CITY OF PEARL, MISSISSIPPI

WILLIAM A. BACON

BACON, STONE, JERNIGAN AND GOODMAN

Post Office Box 15

Jackson, Mississippi 39205

601-355-3451

Attorneys for Respondent

CERTIFICATE

I, William A. Bacon, of Bacon, Stone, Jernigan and Goodman, attorneys for the Respondent, City of Pearl, Mississippi do hereby certify that I have this day mailed by United States mail, postage pre-paid, three true and correct copies of the above and foregoing Opposition to the Petition for Writ of Certiorari to Honorable John C. McLaurin, Attorney for the Petitioner at his usual business address: John C. McLaurin, Post Office Box 25, Brandon, Mississippi 39042.

This 17th day of April, 1979.

WILLIAM A. BACON